

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

VINCENT PRICE,	§	
<i>Plaintiff,</i>	§	
	§	
vs.	§	CIVIL ACTION H-06-3919
	§	
WHOLE FOODS MARKET, INC.,	§	
<i>Defendant.</i>	§	

**ORDER**

This employment discrimination case is before the court on plaintiff Vincent Price's motion to compel responses to his requests for production (Dkt. 20), and defendant Whole Foods Market, Inc.'s motion to compel responses to its interrogatories and requests for production (Dkt. 23).<sup>1</sup> Having considered the parties' submissions and the law, the court concludes that both motions should be denied in part and granted in part.<sup>2</sup>

---

<sup>1</sup> The motions have been referred to this magistrate judge by the district court for resolution (Dkts. 21, 25).

<sup>2</sup> Whole Foods objects that Price's counsel did not adequately confer prior to filing his motion. The court agrees that counsel did not comply with Local Rule 7.1(D). In the future, the court will strike any motion that is filed without having actually conferred by telephone with opposing counsel in an effort to resolve the dispute. Firing off a letter and not waiting for a response is no conference at all. Nonetheless, in order to avoid further delay the court has considered Price's motion on its merits.

## **I. Background**

Price, an African-American, was hired in May 2004 as a bakery production manager at the Whole Foods Market on Esplanade Blvd. in New Orleans. In January 2005, he applied for a position as bakery team leader at the Veterans Blvd. store in New Orleans. He was passed over for an interview and a white female, Jessica Brown, was hired for the position. When Price complained of discrimination, Whole Foods, over the objections of the Veterans store manager, created the position of “co-bakery team leader.” At the time Hurricane Katrina struck, Price was employed as “co-bakery team leader” at the Veterans store.

After Katrina, Whole Foods guaranteed employment to all of its displaced New Orleans employees. Price was given a temporary assignment at the Bellaire store in Houston, Texas. He reported for work on September 28, 2005. The parties dispute what happened next, but there is no dispute he did not report back to the store after September 29, 2005. The Veterans store reopened on or about November 1, 2005. Brown returned to that store as a bakery team leader. Price did not.

Price has filed a motion to compel further document production. He does not believe Whole Foods’ representation that certain documents were destroyed by Hurricane Katrina, and believes Whole Foods is withholding other responsive

documents. For its part, Whole Foods contends that Price's answers to its discovery requests are incomplete and evasive.

## **II. Analysis**

The scope and limits of discovery are governed by Federal Rule of Civil Procedure 26(b). In general,

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

"District courts have broad discretion in all discovery matters." *Seifert v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 270 (5th Cir. 2006).

### **A. Price's Motion to Compel**

Price objects to almost every response by Whole Foods to his document requests. For clarity if not conciseness, the court summarizes the requests and responses as follows:<sup>3</sup>

---

<sup>3</sup> The requests and responses are set forth in full in Exhibit A to Price's motion.

***Request for Production 1:*** Price seeks a copy of his employment file. Whole Foods represents that it has produced the contents of Price's employment file that were salvageable after Hurricane Katrina.

***Request for Production 2:*** Price seeks his payroll records. Subject to various objections, Whole Foods produced payroll records for only one week, September 26, 2005 through October 2, 2005.

***Requests for Production 3, 4, 10, 11, 17:*** Price seeks documents related to his initial job application with Whole Foods and the job posting for that position; his application for the Veterans store bakery team leader position and the job posting for that position; and documents describing the job duties and responsibilities of "co-bakery team leader." Whole Foods represents that such documents are no longer in its possession.

***Requests for Production 5, 6, 7, 8:*** Price seeks documents relating to Whole Foods' hiring practices, job selection process, and/or the candidate evaluation process; disciplinary procedures; work scheduling policies; and open-door communications policy. Subject to various objections, Whole Foods has produced excerpts from its General Information Guide.

***Requests for Production 12, 14, & 15:*** Price seeks documents relating to Jessica Brown's application and qualifications. Whole Foods represents that it has produced all documents in its possession.

***Requests for Production 13, 16:*** Price seeks documents relating to the decision not to promote him to bakery team leader at the Veterans store. Whole Foods represents that it has produced all documents in its possession.

***Request for Production 21:*** Price seeks documents relating to the decision to bring Brown back but not him after reopening the Veterans store. Whole Foods has objected to this request as vague and unclear. It is Whole Foods' position that Price resigned, and thus was not available to be brought back to the Veterans store.

***Request for Production 23:*** Price seeks documents relating to his "resignation." Whole Foods represents that all documents have been produced.

***Request for Production 24:*** Price seeks Whole Foods' policies regarding an employee's resignation. Whole Foods has objected to this request as vague and unclear.

***Request for Production 28:*** Price seeks documents relating to the "disciplinary action" against him on or about September 29, 2005. Price's request gave the date as 2007, so Whole Foods responded that no documents exist.

***Request for Production 29:*** Price seeks documents related to taking him off the schedule at Bellaire store on or about September 29, 2005. Price's request gave date as 2007 and omitted the word "schedule," so Whole Foods responded that no documents exist and objected to the request as vague.

***Request for Production 30:*** Price seeks communications regarding his discrimination/retaliation complaints. Whole Foods represents that all responsive documents have been produced.

***Request for Production 33:*** Price seeks documents related to the discrimination charge of Jacqueline Muse. Whole Foods objects to producing documents relating to a third-party without a preliminary showing of relevance.

In his motion, Price offers for the most part only unsupported suspicions that documents exist despite contrary representations by Whole Foods. Price has not given the court any reason to question the veracity of the affidavit of Mark Ehrenstein, Team Member Services Director for Whole Foods, explaining how records were handled in the wake of Katrina.<sup>4</sup> Personnel files were maintained at each store. The Veterans store suffered water and mold damage after the storm. Damaged documents from the Veterans store were sent to Austin for cleaning. Salvageable documents were sent back to the store where the employee was working.

---

<sup>4</sup> Exhibit 2 to Whole Foods' response.

Therefore, Price's personnel records were returned to the Bellaire store where he has been reassigned. The court cannot compel Whole Foods to produce documents that have been destroyed.

The only real disputes the court gleans from the motion and response are as to requests 2, 5, 6, 7, 8, 21, 24, 28, 29, and 33. Whole Foods objected to these requests (other than 33) as vague and/or ambiguous. Those objections are overruled. As to requests 2, 5, 6, 7, and 8, it is unclear whether, in spite of its objections, Whole Foods produced all documents in its possession. For instance, in response to request 2, Whole Foods produced payroll records for the week of September 26, 2005 through October 2, 2005; it is not clear whether all prior records were destroyed in the flood. Whole Foods must supplement its responses either to clarify that it has produced all documents in its possession, or to produce any additional responsive documents.

Despite an initial lack of clarity in requests 21, 24, 28, and 29, Whole Foods should now be in a position to supplement its responses to those requests in light of Price's motion. If Whole Foods has any responsive documents, it must produce them. If no responsive documents exist, it should say so.

As to request 33, Whole Foods' objection to producing documents related to the EEOC charge of Jaqueline Muse is overruled. Whole Foods objects that Price has not met his burden to show that the documents are relevant because he has not

established that Muse was similarly situated to him. As Price noted, admissibility is not the test for relevance. Price has alleged that Muse was passed over for a team leader promotion in favor of a white applicant and filed a charge of discrimination with the EEOC. Price is entitled to some discovery so that he can determine whether Muse's EEOC charge is helpful to his case. Price's request is reasonably calculated to lead to the discovery of admissible evidence. Whole Foods must produce all documents relating to Muse's EEOC charge. Truly sensitive identifying information, such as Muse's social security number and date of birth, may be redacted from the documents produced.

**B. Whole Foods' Motion to Compel**

Whole Foods objects that Price's answers and responses to its discovery requests are "improper, evasive, incomplete, and/or disorganized." Specifically, Whole Foods objects to Price's answers to interrogatories 11, 22-24, and responses to document requests 5, 15, 29, 32, 33, 36, and 47.<sup>5</sup> Whole Foods also objects that Price did not in his supplemental document production on July 7, 2007 identify the requests to which the supplemental documents were responsive.

***Interrogatories 11, 22-24:*** Price's answers to the referenced interrogatories are somewhat confusing. The source of the confusion primarily is that Price does not

---

<sup>5</sup> The requests and responses are set forth in full in Exhibits 1 to Whole Foods' motion.



distinguish between communications and acts that he believes are evidence of *discrimination*, those that he believes are evidence of *retaliation*, and those that relate to his *resignation*. Nonetheless, in total he has provided a fairly detailed narrative of the events underlying his claims. There is nothing inherently improper about Price's incorporation of prior answers into subsequent interrogatory answers. The court concludes that Price's answers, while not a model of clarity, are sufficient.

***Document requests 5, 15:*** Price has objected to requests 5 and 15 as vague and ambiguous, and as to 5, "inscrutable, harassing, and unduly burdensome." Price's objections are overruled. Whole Foods is entitled to know which documents Price relies upon in support of his specific claims. Price complains in his response that he should not have to respond to a request for "all documents that pertain to his lawsuit." Request 5 is not so generic, but specifically defines the documents it seeks as those that support a connection between events in September and October of 2005 and his Spring 2005 application for bakery team leader at the Veterans store. Request 15 is similarly clear in seeking documents Price contends support his allegation of retaliation. Price must produce all documents responsive to requests 5 and 15, or identify by bates number all previously produced responsive documents.

***Document request 29:*** Request 29 seeks documents and/or audio/video recordings of correspondence or communications with Whole Foods or its employees.

Price objected to these requests as vague, ambiguous, and overly broad, but nonetheless agreed to produce documents at a “mutually convenient place and time.” If Price has not yet produced responsive documents as agreed, he must do so within 10 business days of entry of this order.

***Document request 32:*** Price objects to request 32 as vague, ambiguous, harassing, and duplicative of several other requests. The court agrees the request is vague. It is unclear what Whole Foods means by documents Price “submitted or recovered” from a current or former Whole Foods employee. Clearly, Whole Foods is getting at something other than communications between Price and Whole Foods employees (information covered by request 29), or documents removed by Price from a Whole Foods store (information covered by request 36). The court will not speculate what Whole Foods has in mind, but if it suspects, for instance, that Muse or another employee gave Price a copy of Muse’s EEOC charge, it should just ask that question directly. Price’s objection to request 32 as written is sustained.

***Document request 36:*** Price objects that Whole Foods’ request 36, seeking all documents Price “removed” from any Whole Foods store is vague, ambiguous, and harassing, but further responded that there are no responsive documents. Thus, there is no reason to compel a further response.

***Document request 47:*** Request 47 seeks the guidelines, policies, and procedures Price contends Whole Foods has violated. Price objects to request 47 as vague and ambiguous. Price's objection is overruled. Price must produce any responsive documents in his possession, or simply state that he does not have the documents.

***Supplemental responses:*** Despite objecting to several document requests in his June 11, 2007 responses, Price agreed to produce responsive documents at a future date.<sup>6</sup> Price made a supplemental document production on July 7, 2007 in connection with his initial disclosures. Whole Foods complains that it cannot tell to which document requests the July 7, 2007 production was responsive. For each request that Price agreed to produce documents, Price must verify that he has produced all documents in his possession. If he has not, he must produce such documents within 10 days of entry of this order.

### **III. Conclusion and Order.**


Price's motion to compel (Dkt. 20) is granted in part and denied in part as set forth in detail above. Whole Foods' motion to compel (Dkt. 23) is granted in part and denied in part as set forth in detail above. All documents and interrogatory answers

---

<sup>6</sup> Specifically, requests 1-4, 6, 8-11, 13, 14, 17, 19, 22, 27, 30, 31, 35, 37, 38, 44, and 46.

ordered to be produced shall be served within 10 business days of the date of entry of this order. All other requested relief is denied.

Signed at Houston, Texas on November 6, 2007.

  
\_\_\_\_\_  
Stephen Wm Smith  
United States Magistrate Judge